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Nos. 14-556, 14-562, 14-571, 14-574

In The

Supreme Court of the United States

JAMES OBERGEFELL, ET AL.,

Petitioners,

v.

RICHARD HODGES, DIRECTOR,
OHIO DEPARTMENT OF HEALTH, ET AL.,

Respondents.

[Consolidated Case Captions Listed On Inside Front Cover]

On Writs Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF AMICI CURIAE ORGANIZATIONS THAT PROMOTE BIOLOGICAL PARENTING IN SUPPORT OF RESPONDENTS

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VALERIA TANCO, ET AL.,

Petitioners,

v.

WILLIAM EDWARD "BILL" HASLAM,
GOVERNOR OF TENNESSEE, ET AL.,

Respondents.

APRIL DEBOER, ET AL.,

Petitioners,

v.

RICK SNYDER,
GOVERNOR OF MICHIGAN, ET AL.,

Respondents.

GREGORY BOURKE, ET AL.,

Petitioners,

v.

STEVE BESHEAR,
GOVERNOR OF KENTUCKY, ET AL.,

Respondents.

QUESTIONS PRESENTED

1. Does the Fourteenth Amendment require a state to license a marriage between two people of the same sex?

2. Does the Fourteenth Amendment require a state to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed out-of-state?

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INTEREST OF AMICI CURIAE[1]

Amici Curiae are organizations with interests and expertise in issues pertaining to child welfare and parenting. Because those issues are directly implicated in these cases, each amici has a significant interest in the outcome of these cases. Amici include the following organizations:

Family Policy Institute of Oklahoma (FPIO) is a nonprofit education and research organization committed to "Protecting Families and Strengthening Communities." At the core of FPIO's effort is preserving marriage as an institution inherently linked to procreation and childrearing. Because redefining marriage to include same-sex couples further erodes the long-established, foundational principle that each child deserves to be raised by his or her biological mother and father, FPIO has endeavored to educate Oklahoma faith, policy and community leaders on the paramount importance of improving natural family relationships both currently and for future generations. Given this organizational commitment, FPIO

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[1] Parties to these cases have consented to the filing of this brief, and letters indicating their consent are on file with the Clerk. Amici state that no counsel for a party authored this brief in whole or in part. Amici also state that aside from the Marriage Law Foundation providing a portion of the printing costs, no person other than the amici and their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

has a significant interest in supporting the claims Respondents assert here.

Christian Medical Association (CMA), founded in 1931 and today serving nearly 15,000 members, is a nonprofit national organization of Christian physicians and allied healthcare professionals. CMA includes thousands of psychiatrists, pediatricians, Ob-Gyn physicians, family-medicine physicians, and other medical professionals whose patients and practices are deeply impacted by governmental policies related to marriage, sexuality, reproduction, and child-rearing. CMA experts regularly examine and educate others on the health, ethical, and moral aspects of such issues. CMA has published statements outlining the social and public-policy bases for promoting "marriage [as] a consensual, exclusive and lifelong commitment between one man and one woman, expressed in a physical union uniquely designed to produce and nurture children." Within its membership and also to the public, CMA advocates the unique benefits of rearing children by their two biological parents, and CMA advances adoption as an alternative when this ideal is not available, including the adoption of embryos conceived through in-vitro fertilization.

SUMMARY OF ARGUMENT

A universal, indispensable facet of the human experience is the search for an identity – making

sense of life and one's place in the world. This critical task is challenging for everyone, but it is particularly difficult for children who are reared apart from one or both of their biological parents or, worse yet, deprived of any relationship with, or information about, the people who are responsible for their very existence. Biological parents are naturally suited to provide the optimal upbringing for the children they conceive. They are the only people who innately show children deeply ingrained, genetically predisposed aspects of themselves and previous generations. Trying to develop an identity and sense of self without these crucial pieces is like attempting to discern one's appearance without looking in a mirror.

Not surprisingly, many individuals separated from either their mother or their father suffer significant harm. For instance, their inherent, unrelenting desire to search for their biological parents creates angst within them and tension within their families. In addition, they often suffer from a psychological condition known as genealogical bewilderment – confusion and uncertainty about their origins – that fundamentally undermines their security and negatively affects their sense of self, belonging, and identity. They also regularly experience deeply rooted frustration, depression, anxiety, and sadness that result from the inability to know or establish a relationship with their biological parents. And their physical health is at risk because they typically do not know, and lack access to, their biological parents' medical history.

It follows, then, that the State best serves children when it adopts policies that promote biological homes. Man-woman marriage laws do just that. The preeminent purpose of marriage – and the overriding reason why the government recognizes marriage – is to connect children to both of their biological parents. But further redefining marriage to include same-sex couples will, for various reasons explained herein, lead to more children being raised apart from one or both biological parents. If marriage is transformed in this way, over time, increasing numbers of children will be deprived of the enormous advantages of being raised in a biological home and, as a result, suffer a range of harms. Additionally, such a redefinition will facilitate the severance of intergenerational connections to a child's ancestral heritage that play a powerful role in one's self development and well-being. The State's efforts to avoid these harms by retaining the man-woman definition of marriage fit squarely within its traditionally broad authority over its domestic-relations policies. This Court, therefore, should affirm the constitutionality of man-woman marriage laws as Respondents assert, and as the citizens of Oklahoma and other States have clearly determined through the democratic process.

ARGUMENT

I. Two-Parent Biological Families Are Best for the Well-Being of Children.

A. Connecting Children to Their Biological Parents Is Vital to Their Development and Identity Formation.

All individuals, this Court has observed, have a profound interest in "defin[ing] [their] own concept of existence, of meaning, . . . and of the mystery of human life." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 851 (1992). Yet as explained below, encouraging family arrangements where children are raised apart from one or both of their biological parents frustrates their ability to know themselves and form their identities.

"In Western culture, it is presumed that children will have a better sense of their identity and higher self-esteem if they know their genetic roots." *Pratten v. British Columbia*, 2011 BCSC 656, para. 95 (Can.) (testimony of Dr. Diane Ehrensaft), *rev'd on other grounds*, 357 DLR (4th) 660 (2012); *see also* Michael Hanby, *The Brave New World of Same-Sex Marriage*, The Federalist, Feb. 19, 2014, http://thefederalist.com/2014/02/19/the-brave-new-world-of-same-sex-marriage/ (noting that "having a lineage is deeply constitutive of [a person's] humanity [and] his personal identity"). And "[i]t is now generally accepted" in the social-science literature "that knowledge about their origins helps . . . children to develop a secure sense of identity." Susan Golombok, *Parenting: What really counts?* 25 (2000).

"An individual's identity is never formed in isolation. It is in part dependent on a mirroring back from one's [own parents]." *Pratten*, 2011 BCSC 656, at para. 96 (testimony of Dr. Diane Ehrensaft). Biological parents "are the closest thing to a mirror that [children] can find," J. David Velleman, *Family History*, 34 Philosophical Papers 357, 368 (Nov. 2005); they show children aspects of themselves "that are deeply ingrained and resistant to change," *id.* at 366, such as their "personal manner," "styles of thinking and feeling," and "temperament," *id.* at 365. Acquiring this sort of self-knowledge requires more than merely learning information; a child must develop an ongoing relationship with the two people who together brought about her very existence.

"[T]o develop a secure identity, young people need to build a coherent story of their lives." Golombok, *supra*, at 28. But children separated from their biological mother or father face great obstacles when constructing their "life-story." Velleman, *supra*, at 375; *see, e.g.*, Adele Jones, *Issues Relevant to Therapy with Adoptees*, 34 Psychotherapy: Theory, Research, Practice, Training 64, 66 (1997) (stating that "an adoptee's struggle to achieve a coherent story is often a daunting task" that is crucial to the "development of an identity" and "self-esteem"). They, after all, must cobble together a narrative that lacks core components about themselves. As one person separated from her biological father tellingly revealed: "I think of myself as a puzzle; [but] the only picture I have ever known is half-complete." Elizabeth Marquardt et

al., *My Daddy's Name is Donor: A New Study of Young Adults Conceived Through Sperm Donation* 21 (Institute for American Values 2010) (quotation marks omitted). In contrast, a child reared in an intact biological home has access to all the pieces of the puzzle: she has enduring relationships with the two people who together gave her life.

The innate desire of children to search for their biological parents illustrates the significance of those relationships to their identity development. "When a parent of an adolescent cannot provide a 'genetic' mirror because that parent has no biological link to the child, the son or daughter will have to look elsewhere for the reflections." *Pratten*, 2011 BCSC 656, at para. 96 (testimony of Dr. Diane Ehrensaft). "[T]his searching" for the child's biological parent "is provoked by a void in the process of identity formation, which is a key part of psychological development and the establishment of psychological integrity." *Id.* at para. 95 (testimony of Dr. Diane Ehrensaft).

"[A]bout 50 [percent] of all adopted persons will, at some point in their life, search for their birth parents." Ulrich Müller & Barbara Perry, *Adopted Persons' Search for and Contact with Their Birth Parents I: Who Searches and Why?*, 4 Adoption Quarterly 5, 12 (2001).[2] "Many adoptees . . . go to heroic

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[2] In acknowledging challenges faced by adoptees, Amici do not cast aspersions on the role of adoption in society. Adoption is an indispensable social good that provides children a home when the ideal – a stable, two-parent biological family – is unavailable.

lengths to find their biological families, impelled by what they describe as a deep and unrelenting need." Velleman, *supra*, at 359. "Adopted adolescents," in particular, "often become extremely interested in their origins, seeking out information about, and . . . contact with, their biological parents." Golombok, *supra*, at 28.

Like adoptees, children conceived through sperm donation "typically express a desire to search for some actual information about their [biological father]" in order "to establish their unfolding adult identities." *Pratten*, 2011 BCSC 656, at para. 95 (testimony of Dr. Diane Ehrensaft); *see also* Marquardt, *supra*, at 7 (revealing that seventy percent of surveyed donor-conceived children "wonder[ed] what [their biological father's] family is like"). Their "search for an identity" often "generate[s] a strong desire to seek out [their biological fathers]," "lay claim to [their] own heritage and future," and "gather information about themselves and their roots." *Pratten*, 2011 BCSC 656, at para. 95 (testimony of Dr. Diane Ehrensaft). When interviewed by the media, one donor-conceived individual somewhat begrudgingly admitted that his absent biological father "is a part of [him]," and that without knowing his father, he "will never feel completely whole." Natasha Pearlman, *I Feel So Betrayed Because I Don't Know Who My Father Is*, Daily Mail, Aug. 2, 2007. Similarly, a donor-conceived person named Lindsay Greenawalt spent years wondering about her father, asking herself: "Who is he? Do I look like him? Does he like the same stuff I do?" Judith

Graham, *Sperm Donors' Offspring Reach Out Into Past*, Chicago Tribune, June 19, 2005, *available at* http://articles.chicagotribune.com/2005-06-19/news/0506190276_1_sperm-donor-sperm-bank-dna-sample. These questions, and many more like them, abound among donor-conceived children.

Importantly, even when children enjoy stable and meaningful relationships with non-biological custodial parents, their innate need to seek out their origins generally remains. *See* Marian K. Affleck & Lyndall G. Steed, *Expectations and Experiences of Participants in Ongoing Adoption Reunion Relationships: A Qualitative Study*, 71 Am. J. of Orthopsychiatry 38, 38 (Jan. 2001) (noting that "the vast majority of adoptees who search have positive relationships with adoptive parents," and that "the quality of adoptive relationships (either positive or negative) is not associated with a decision to search"). For example, even though Eve Andrews has a close relationship with her stepfather, she acknowledges many "unanswered questions in [her] life" and wants "to know the other half of [her]" – "the person who is responsible for [her] being here." Graham, *supra*.

Consider also the story of Amy, one of the many children placed into a loving family by the American Adoptions agency. Although Amy was adopted when only three-months old, she has long desired to find her biological parents. In her words: "I have a very loving family, but always longed to have the questions answered as to who my biological parents were and who I looked like. Was there medical history that I

need to know? Did they think of me as often as I thought of them?" American Adoptions, *Amy's Adoption & Reunion Story*, http://www.americanadoptions.com/adopted/article_view/article_id/4112?cId=139 (last visited March 21, 2015). Finding her biological parents after a four-year-long search was therapeutic for Amy. As she explains: "It has been a very healing thing just to be able to ask them things that I wonder about from time to time." *Id.*

These stories, and countless others like them, tangibly illustrate "the power of a biological connection. . . . These kids [are] going to find their [biological parents]. . . . [I]t's going to happen because there's a fundamental drive to do it." Graham, *supra*.[3]

Yet even when children are able to establish an intermittent connection with a missing biological

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[3] Even same-sex couples and single parents demonstrate the importance of parent-child biological ties when they choose sperm donation and surrogacy over adopting an unrelated child. *See* Meredith Rodriguez, *Lawsuit: Wrong Sperm Delivered to Lesbian Couple*, Chicago Tribune, Oct. 1, 2014, *available at* http://www.chicagotribune.com/news/local/breaking/ct-sperm-donor-lawsuit-met-20140930-story.html (discussing lawsuit filed by a Caucasian same-sex couple against a sperm bank that erroneously provided them with the sperm of an African-American man). For those prospective parents, "creating a new child designed to suffer . . . alienation" from one biological parent "is often preferred to adoption precisely because of the parents' interest in biological ties – a[n] interest that they choose to further slightly in their own case by creating a person for whom the same interest will be profoundly frustrated." Velleman, *supra*, at 374.

parent, that is an inadequate substitute for the well understood advantages of being raised by both biological parents from birth to adulthood. Thus, any State has a significant interest in promoting social policies which encourage parental responsibility to their biological children including but not limited to promoting the primacy of marriage between a father and mother.

B. Children Benefit from the Childrearing Advantages Available to Biological Parents.

Natural parents have access to childrearing advantages that non-biological parents lack. One source of biological parents' advantages in childrearing is that they possess experiential knowledge about their children's innate characteristics, tendencies, and temperaments – features that originated with and are reflected in the parents. *See* James E. Deal et al., *Temperament Factors as Longitudinal Predictors of Young Adult Personality*, 51 Merrill-Palmer Quarterly 315, 315 (2005) ("[T]here is a general consensus that temperament forms the enduring, biologically based foundation of personality"). That knowledge aids parents in the complex task of childrearing, for each child "has an inborn nature that joins together the natures of two adults," and that child's biological parents are best positioned to show the child "how to recognize and reconcile . . . the qualities within [her]self." Velleman, *supra*, at 370-71.

In contrast, non-biological custodial parents are left "in the dark" about these matters, "in ways that adversely affect their parenting." *Id.* at 370. As one scholar analyzing these issues observed: "[R]aising my children without knowing their mother – that would have been like raising them with one eye closed. It's . . . my understanding of her and me in relation to one another" that "has helped me to understand them" "since each child is a blend of qualities that were first blended in our relationship." *Id.*

Amy from American Adoptions, the adoptee whose story was recounted above, explains these challenges faced by non-biological parents. "Some things I did as a child," she recalls, "bugged my parents because they didn't understand." American Adoptions, *supra*. After eventually meeting her biological parents and finding out "where some of [her] personality quirks came from," she and her adopted parents began to understand her idiosyncrasies. *Id.* Yet this later-acquired knowledge, while immensely beneficial to Amy and her family going forward, does not undo the hardships endured during her upbringing because her adopted parents did not have an innate understanding of Amy's temperament and quirks. Children thus benefit from biological parents' unique knowledge about their intrinsic characteristics.

Moreover, the unequal biological ties that exist in homes with one biological parent and one non-biological parent often breed an environment of competition and rivalry (instead of cooperation) among

the child's caregivers. As one social scientist has explained:

> [T]he lack of conjoined biological ties creates unique difficulties and relational stresses. [In a lesbian home, for example,] [t]he birth and non-birth mother . . . are subject to competition, rivalry, and jealousy regarding conception and mothering roles that are never faced by conceiving opposite-sex couples, and which, for the children involved, can result in anxiety over their security and identity.

D. Paul Sullins, *Emotional Problems among Children with Same-Sex Parents: Difference by Definition*, 7 Brit. J. of Educ., Soc'y & Behav. Sci. 99, 114 (2015).

Finally, biological parents have a deep-seated, natural inclination to care for their children "because they . . . labored to give them birth and . . . recognize them as a part of themselves that should be preserved and extended" – a concept known as kin altruism. Don Browning & Elizabeth Marquardt, *What About the Children? Liberal Cautions on Same-Sex Marriage*, *in* The Meaning of Marriage 29, 36 (Robert P. George & Jean Bethke Elshtain eds., 2006). Kin altruism is a fundamental component of mankind's design, a natural force that advances the propagation of our species. It should therefore be no surprise that the idea of kin altruism is esteemed in every human society. While prevailing family structures vary somewhat from culture to culture, "there is a persistent core value that is widely cherished and protected around the world" – namely, that "the

people who give life to the infant [should] also be[ ], as nearly as possible, the ones who care for it." *Id.* (emphasis omitted). It is no wonder, then, that for decades, federal child-welfare law and policy recognizes family preservation and reunification with a child's biological parents as the top priority. Fred Wulczyn, *Family Reunification*, 14 The Future of Children 95, 95-98 (Winter 2004).

This universal principle reflects a truth long recognized by scholars and philosophers alike: that the "people who conceive a child, when they recognize their relation to it, will on average be the most invested in its nurture and well-being." Browning & Marquardt, *supra*, at 36; *see, e.g.*, Aristotle, *Ethics*, VIII:12 (W. D. Ross trans.) ("[P]arents love their children as being a part of themselves, and children their parents as being something originating from them."). That truth not only has deep roots in Anglo-American law, *see* 1 William Blackstone, *Commentaries* *435 (recognizing the "insuperable degree of affection" for one's natural children "implant[ed] in the breast of every parent"); it has been repeatedly affirmed by this Court. *See Troxel v. Granville*, 530 U.S. 57, 68 (2000) (presuming that the "natural bonds of affection lead parents to act in the best interests of their children" (quoting *Parham v. J.R.*, 442 U.S. 584, 602 (1979))).

C. Depriving Children of Their Biological Parents Harms Their Development, Identity Formation, and Well-Being.

A blogger who calls herself "Daughter of a Donor" describes what transpired the day she discovered that she was the product of donor conception:

> I've just found out the man I'd grown up believing to be my father – is not.
>
> . . .
>
> . . . I feel like I've had a stroke. A weird collage of fathers is looming in and out of my vision, like a psychedelic Riverdance. The one who isn't my father anymore, the step-father who never was my father and . . . wait – who . . . *is* my father then?

Part One – D(iscovery) Day, Daughter of a Donor Blog (Nov. 18, 2013), http://daughterofadonor.com/?p=2290. She describes "being unexpectedly de-fathered" as akin to "a near-death experience," casting her into a "sea of uncertainty." *Id.*

As the story of "Daughter of a Donor" palpably demonstrates, the "psychological consequences" that result "from not knowing . . . [a] genetic parent[ ]" are far-reaching, extending into adulthood. *Pratten*, 2011 BCSC 656, at para. 109 (testimony of Professor Ken Daniels); *see also* Marquardt, *supra*, at 7 (finding that children conceived through sperm donation, and thus raised without their biological father, often "experience profound struggles with their origins and identities"). These enduring consequences, as explained

below, range from psychological harm to compromised physical health.

The unyielding need to search for one's biological heritage causes angst within the person and tension within her family. One study found that over half of the donor-conceived children surveyed have "worried that if [they] try to get more information about or have a relationship with [their biological father], [their] mother and/or the father who raised [them] would feel angry or hurt." Marquardt, *supra*, at 7. As one "17-year-old daughter of a lesbian couple" explained:

> I don't know my father, his name, heritage, or anything. I can only remember one time the topic of my father really came up in conversation. I was eight years old and I denied any interest in knowing about him. I was worried that my parents would think that I am ungrateful for all that they have done for me. . . .

Id. at 25 (quoting a story posted on http://familieslikemine.com/). In a blog post, another donor-conceived child explains why he does not discuss the subject of his missing father with his custodial parents: "I've never talked to my parents about [the fact that I have a donor for a dad], because I'm afraid of their responses. . . . [I]t hurts . . . knowing my parents will probably curse at me for wanting to know my birth-dad." *I Feel Scared and Alone and Confused*, Blog Post at Anonymousus.org (Oct. 28, 2014), http://anonymousus.org/stories/story.php?sid=1742#.VLgmzy

vF98F. These children yearn to know their biological parents but fear the prospect of upsetting the parents who raised them. This tension injects anguish and trepidation in the lives of many children who are separated from their biological mother or father.

Moreover, children left in the dark about their genetic origins "may suffer from the psychological phenomenon referred to as genealogical bewilderment, confusion about from whence they come, along with accompanying psychological dysphoria as a result of grappling with the 'missing piece' of themselves." *Pratten*, 2011 BCSC 656, at para. 95 (testimony of Dr. Diane Ehrensaft); *see also* Rachel Levy-Shiff, *Psychological Adjustment of Adoptees in Adulthood: Family Environment and Adoption-Related Correlates*, 25 Int'l J. of Behavioral Dev. 97, 98 (Mar. 2001) ("Those who lack this information [about their genetic origins] may continue to experience 'genealogical bewilderment' and a sense of incompleteness"). "A genealogically bewildered child is one who either has no knowledge of his natural parents or only uncertain knowledge about them." H. J. Sants, *Genealogical Bewilderment in Children with Substitute Parents*, 37 Brit. J. Med. Psychol. 133, 133 (1964). "The resulting . . . confusion and uncertainty . . . fundamentally undermine[s] [the child's] security," *id.*, and "negatively affect[s] [her] sense of self, belonging and identity," *Pratten*, 2011 BCSC 656, at para. 94 (testimony of Dr. Diane Ehrensaft); *see also* Levy-Shiff, *supra*, at 98 (noting that this "sense of incompleteness . . . fundamentally undermines [a child's] sense of security"); *id.* at 102

(noting that "the lack of information about one's biological background is likely to create a 'hereditary ghost' which may contribute to a confused, unstable, and distorted sense of self").

Deep-seated frustration often accompanies the inability to know or establish a relationship with one's biological parents. Indeed, it is profoundly "frustrating" for individuals "to know that [they] will never meet" parents "who could instantly show [them] a living rendition of deeply ingrained aspects of [themselves]." Velleman, *supra*, at 369. In addition, "sadness, frustration, depression and anxiety" often result when individuals "are unable to obtain information" about their biological origins. *Pratten*, 2011 BCSC 656, at para. 111 (adopting this as a finding of fact). For example, Lindsay Greenawalt explains her constant sense of frustration that results from not knowing anything about her father: "I feel my right to know who I am and where I come from has been taken away." Graham, *supra*. And for many individuals deprived of one or both of their biological parents, it is too often the case that this "wound remains open" because "there is no possibility of closure." *Pratten*, 2011 BCSC 656, at para. 109 (testimony of Professor Ken Daniels).

Psychological wounds are particularly common among donor-conceived children, who often struggle with a deeply felt perception that their very existence serves the purposes of others, leaving no room for their own interests. Lynne Spencer, a nurse and donor-conceived adult who interviewed eight other

donor-conceived individuals for her master's thesis, cuts to the heart of the matter: "[W]ho I am doesn't matter. . . . It's only what I represent that matters . . . that I am someone's child, but I'm not a person in my own right." Marquardt, *supra*, at 24-25. Ms. Spencer pointedly asks, "[i]f my life is for other people's purposes, and not my own, then what is the purpose of my life?" *Id.* at 24. Her question reveals the significant struggles facing children who are intentionally created to be raised without one or both of their biological parents; they are scarred with the impression that they exist like shadows, governed by the will and whims of adults.

Furthermore, individuals who do not know their biological parents' medical histories are also exposed to potentially life-threatening harm. "The importance of knowing [one's] medical family history is well recognized. . . . [F]amily history is a key component of every medical genetics clinical assessment and is performed in every patient encounter." *Pratten*, 2011 BCSC 656, at para. 84 (testimony of Dr. Julie Lauzon) (emphasis omitted); *see also* American Medical Association, *Family Medical History in Disease Prevention* 1 (2004), *available at* https://download.ama-assn.org/resources/doc/genetics/x-pub/family_history02.pdf ("An accurate family history is a well-established method to recognize genetic disorders and susceptibilities that may pose risks for future health problems."). "[A]n individual's genetic make-up plays a significant role in their health by influencing everything from their risk of congenital anomalies to their chance of

developing a common disorder such as cardiovascular disease, asthma, and obesity." *Pratten*, 2011 BCSC 656, at para. 83 (testimony of Dr. Julie Lauzon). But "no genetic test developed to date can determine and accurately quantify risk for all diseases. Therefore, a 'good old-fashioned' family history remains the best way to screen for genetically linked health problems." *Id.*

Yet children who do not know one or both of their biological parents lack access to this vital information and thus are exposed to increased health risks. Consider, for example, the story of Alison Davenport. Because she was conceived through sperm donation and did not know her biological father, she endured great difficulty finding a close match for a bone-marrow transplant to treat her lymphoma. *Pratten*, 2011 BCSC 656, at para. 51. Thankfully, she was finally able to obtain the treatment she needed, but the experience would not have been as traumatic had she known about her father and his medical background.

Sadly, many of the above-mentioned harms – particularly the health-related concerns that result from the absence of information about family medical history – are not confined to the children separated from their biological parents. Breaking the genetic link perpetuates these harms by inflicting them on future generations. That is why Shelley Deacon, a donor-conceived adult, "would like her son to be able to know his heritage." *Pratten*, 2011 BCSC 656, at para. 47. She worries about the risks that not having

this information will inflict on his health. *Id.* at para. 50. Not unique to Shelley, concerns about the hardships that breaking these genetic links will have on the next generation are widespread; they are shared by many others who will never know their biological origins. *Id.*

D. Children Thrive When Raised by Both of Their Biological Parents in an Intact Married Family.

In light of the importance of biological parents for identity formation and the childrearing advantages available to biological parents, it is not surprising that of all possible environments, children generally develop best in a home headed by their married biological mother and father. *See, e.g.*, W. Bradford Wilcox et al., eds., *Why Marriage Matters* 11 (3d ed. 2011) ("The intact, biological, married family remains the gold standard for family life in the United States, insofar as children are most likely to thrive – economically, socially, and psychologically – in this family form."); Paul R. Amato, *The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-Being of the Next Generation*, 15 The Future of Children 75, 75 (2005) (showing that "children in households with both biological parents . . . are less likely to experience a wide range of cognitive, emotional, and social problems, not only during childhood but also in adulthood," than are "children in households with only one biological parent"); Kristin Anderson Moore et al., *Marriage from a Child's*

Perspective: How Does Family Structure Affect Children, and What Can We do About It?, Child Trends Research Brief 1-2 (June 2002) ("[I]t is not simply the presence of two parents . . . , but the presence of *two biological parents* that seems to support children's development.").

Indeed, the most rigorous and reliable studies substantiate the conclusion that children are most likely to achieve favorable outcomes on a number of indicators when they are reared by both of their biological parents in stable family units. *See, e.g.*, Sullins, *supra*, at 100 and 113 (finding that "[j]oint biological parents were associated with the lowest rate of child emotional problems by a factor of 4 relative to same-sex parents," and concluding that "biological parentage uniquely and powerfully distinguishes child outcomes between children with opposite-sex parents and those with same-sex parents"); Mathew D. Bramlett et al., *Adverse Family Experiences Among Children in Nonparental Care, 2011-2012*, National Health Statistics Report No. 74, Center for Disease Control and Prevention, May 7, 2014, at 3, *available at* http://www.cdc.gov/nchs/data/nhsr/nhsr074.pdf ("Children living with one biological parent were between 3 and 8 times as likely as children living with two biological parents to have experienced . . . caregiver violence[ ] or caregiver incarceration or to have lived with a caregiver with mental illness or an alcohol or drug problem."); Sara McLanahan & Gary Sandefur, *Growing Up with a Single Parent: What Hurts, What Helps* 1 (1994)

("Children who grow up in a household with only one biological parent are worse off, on average, than children who grow up in a household with both of their biological parents . . . ").

Further confirming the primacy of the biological home for children's well-being is the body of social science demonstrating that, on average, children raised in stepfamilies do not fare as well as children raised in biological families. *See, e.g.*, Witherspoon Institute, *Marriage and the Public Good: Ten Principles* 10-11 (2008) (noting that boys raised in stepfamilies are much more likely to display antisocial behavior than boys raised in intact biological families); W. Bradford Wilcox et al., eds., *Why Marriage Matters* 7, 14 (2d ed. 2005) (noting that girls raised in stepfamilies are more likely to experience premature sexual development and teenage pregnancy); Amato, *supra*, at 80 ("[T]he marriage of a single parent (to someone other than the child's biological parent) does not appear to improve the functioning of most children."); Cynthia C. Harper & Sara S. McLanahan, *Father Absence and Youth Incarceration*, 14 Journal of Research on Adolescence 369, 390 (2004) ("[Y]ouths in stepparent households faced incarceration odds almost 3 times as high as those in [biological] mother-father families, and significantly higher than those in single-parent households, even though stepfamilies were relatively well off on average."); James Q. Wilson, *The Marriage Problem* 169-70 (2002) (discussing studies showing the disparities between children

raised by stepfathers and children raised by their biological fathers).

Even studies touted by same-sex-marriage proponents acknowledge that intact biological homes produce better outcomes for children. *See, e.g.*, Michael J. Rosenfeld, *Nontraditional Families and Childhood Progress Through School*, 47 Demography 755, 755 (Aug. 2010) ("Studies of family structure and children's outcomes nearly universally find at least a modest advantage for children raised by their married biological parents."); Daniel Potter, *Same-Sex Parent Families and Children's Academic Achievement*, 74 J. of Marriage & Fam. 556, 557-58 (June 2012) ("Children from traditional families, typically described as households with two married biological parents, tend to do better than their peers from nontraditional families (e.g., children living with divorced parents, a single parent, or stepparents) on several indicators of academic achievement").

II. Redefining Marriage to Include Same-Sex Couples Would Lead to the Rearing of More Children Apart From One or Both Biological Parents.

The man-woman marriage institution works to ensure, to the greatest extent possible, that children know and are raised by their biological mother and their biological father – the two individuals who together gave them life. "The genius of the [marital] system is that, through it, the society normally holds

the biological parents responsible for each other and for their offspring. By identifying children with their parents, . . . the social system powerfully motivates individuals to settle into a sexual union and take care of the ensuing offspring." Kingsley Davis, *Introduction: The Meaning and Significance of Marriage in Contemporary Society*, *in* Contemporary Marriage: Comparative Perspectives on a Changing Institution 1, 7-8 (Kingsley Davis ed., 1985).

Indeed, this has long been recognized as the institution's overriding purpose. As Justice Alito observed, "throughout human history and across many cultures, marriage has been . . . inextricably linked to procreation and biological kinship." *United States v. Windsor*, 133 S. Ct. 2675, 2718 (2013) (Alito, J., dissenting). Man-woman marriage laws reinforce this historically attested link between marriage and biological kinship, and affirm that one of marriage's enduring purposes is to connect children to both of their biological parents.

In contrast, further redefining marriage to include same-sex couples will increase the number of children who are raised apart from one or both biological parents. It will do so in at least three ways.

First, as other amici have explained in these cases (and as scholars have explained elsewhere), redefining marriage to include same-sex couples further undermines the marital norms (such as creating bonds between children and their biological parents) that encourage man-woman couples to jointly commit

to the task of raising their biological children in a stable family unit. *See generally* Brief of Amici Curiae Marriage Scholars; Brief of Amicus Curiae Ryan T. Anderson at 19-28; *see also* Robert P. George et al., *What is Marriage?* 56-62 (2012); Witherspoon Institute, *supra*, at 18-19 (presenting arguments endorsed by more than seventy scholars). That erosion of those marital norms will contribute to further instability among the relationships of man-woman couples who are having or raising children, which will lead to fewer of those couples raising – from birth to adulthood – the children they create together.

Second, the redefinition of marriage will likely result in more bisexuals choosing to raise children with a same-sex partner (and thus apart from one or both biological parents) rather than creating and raising their own biological children together with the children's other biological parent. By definition bisexuals – who comprise more than 30 percent of the LGBT community[4] – are interested in romantic relationships with persons of either sex. The man-woman marriage institution (and the laws that reinforce it) provides incentives for bisexuals to marry people of the opposite sex and together raise the children that

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[4] *See* Brian W. Ward et al., *Sexual Orientation and Health Among U.S. Adults: National Health Interview Survey, 2013*, National Health Statistics Report No. 77, Center for Disease Control and Prevention, July 15, 2014, at 1 (noting that 0.7 percent of the respondents identified as bisexual and 1.6 percent identified as gay or lesbian).

they create with their spouse. But redefining marriage removes that inducement and thus will likely, over time, result in more bisexuals entering relationships with persons of the same sex and raising children apart from one or both of their biological parents.

Third, redefining marriage will result in more same-sex couples raising children. Married same-sex couples face a social expectation to raise children. Often, the "friends and colleagues of [same-sex couples] still connect marriage with child-rearing and begin inquiring about plans for parenthood soon after same-sex [marriage] ceremonies." Alana S. Newman, *The Mother-Free Money Tree*, Public Discourse (January 16, 2014), http://www.thepublicdiscourse.com/2014/01/11645. Married same-sex couples also report "increased pressure . . . from their peers in the gay community and from their families . . . to obtain children in order to appear as fully legitimate married couples, equal in every respect to opposite-sexed couples." Helen M. Alvaré, *Same-Sex Marriage and the "Reconceiving" of Children*, 64 Case Western Reserve L. Rev. 829, 856-57 (2014). Due to this increased social pressure, the redefinition of marriage will result in more same-sex couples raising children.

Additionally, many same-sex couples have decided, for a variety of reasons, that they will not raise children unless the State first recognizes their relationships as marriages. As one plaintiff in the federal case challenging California's man-woman marriage law testified: "[T]he timeline for us has always been

marriage first, before family. . . . We need to be married before we have kids." Trial Transcript at 89-90, *Perry v. Schwarzenegger*, 704 F. Supp. 2d 921 (N.D. Cal. 2010) (No. C 09-2292 VRW). For this couple and the many like them, the redefinition of marriage will prompt them to raise children. Yet all children in those households will necessarily be raised without one or both of their biological parents in their home and, most likely, in their lives at all.

Redefining marriage is also likely to result in more same-sex couples creating children through third-party reproductive practices such as sperm donation, egg donation, or gestational surrogacy. The redefinition of marriage, a change that itself encourages same-sex couples to raise children, will legitimize – and perhaps be seen to promote – the third-party reproductive practices that are necessary for same-sex couples to create children. Indeed, "[i]t is already apparent that legalizing same-sex marriage is increasing the number of same-sex couples seeking children via assisted reproductive technologies." Alvaré, *supra*, at 847. For example, a surrogacy clinic in India reports "an increase in the number of gay couples . . . approaching [the] clinic as soon as legitimacy to their public union is granted in their respective states or country." *Id.* at 847 n.108 (quoting Michael Cook, *The Link Between Rented Wombs and Gay Marriage*, Mercatornet, July 19, 2012). Similarly, a "leading U.S. infertility doctor" notes a "surge of inquiries" for his services whenever a jurisdiction redefines marriage. *Id.*; *see also* Newman, *supra* ("Gay male couples are the Number One demographic

. . . targeted by American surrogacy agencies."). But this increase in third-party reproductive practices will lead to the creation of more children who have no relationship with and, in many cases, no knowledge about one of their biological parents.

Another reason why redefining marriage will result in more children being raised by same-sex couples is that such a drastic change to the heart of a State's domestic-relations law threatens to override its policies on adoption and third-party reproductive practices. Many States have limited joint adoptions to situations involving a married husband and wife. *See, e.g.*, Ariz. Rev. Stat. § 8-103(A) ("A husband and wife may jointly adopt children."). And some States have reserved the use of third-party reproductive practices to a married husband and wife. *See, e.g.*, Okla. Stat. tit. 10, § 551 ("The technique of heterologous artificial insemination may be performed in this state by persons duly authorized to practice medicine *at the request and with the consent in writing of the husband and wife* desiring the utilization of such technique for the purpose of conceiving a child or children.") (emphasis added). Overriding these policies on adoption and third-party reproductive practices will open the door to more childrearing by same-sex couples and inevitably result in more children being raised in those settings.[5]

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[5] States' policies on adoption and third-party reproductive practices should be left in the hands of their legislatures. This is particularly important as the States seek to navigate the brave

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In sum, redefining marriage will lead to more children being raised in settings where one or both biological parents is absent or intentionally excluded. And as non-biological families become more prevalent, the trend away from biological parenting will only accelerate. We cannot know with precision all the consequences that will follow this transformation of marriage, but we can be certain that many of these additional children who are raised without one or both of their biological parents will experience the harms discussed above. These harms, in the aggregate, will dwarf any indirect benefit that redefining marriage might afford to children presently being raised by unmarried same-sex couples.[6] For this reason, government concern for child welfare amply

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new world of third-party reproductive practices. Significant moral, philosophical, and medical questions surround technologies that "create children with the intention that they be alienated from [at least one of] their biological [parents]." Velleman, *supra*, at 357. And the commercial dimensions of the third-party reproduction industry – the commodification of human life, as some have called it – add further complex questions that warrant careful discussion and widespread debate. The electorate and their representatives should be free to decide these profound questions for themselves, but constitutionally redefining marriage risks removing sensitive matters like adoption and third-party reproductive practices from the voters' reach.

[6] A very small number of children are currently being raised by same-sex couples. Gary J. Gates, *LGBT Parenting in the United States*, The Williams Institute, UCLA School of Law, at 3 (Feb. 2013) ("Approximately [three] in a thousand children (0.3%) in the [United States] are living with a same-sex couple.").

justifies its decision to retain the man-woman definition of marriage.

Additionally, since the importance of child well-being is paramount to the current and future success of our country, each State has a significant interest in determining how best to promote the ideal of the two-parent, biological home and parental responsibility. The people of each State, either through their elected representatives or through direct democracy, are best suited to determine this most critical aspect of social policy.

CONCLUSION

For the foregoing reasons, Amici respectfully requests that this Court affirm the decision of the Circuit Court.

Respectfully submitted,

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